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ABSTRACT

This report presents results of an examination of state and federal funding of special education programs in Hawaii. Among the objectives of the study were assessment of resources and the appropriateness of their allocation, as well as exploration of alternatives for resource allocation. After a brief introductory chapter, chapter 2 presents background information for the budget revew and analysis, covering the Early State Education Program, federal involvement and requirements, and state special education planning and programs. Chapter 3 discusses selected budget and program issues including questionable budgeting practices of the Department of Education and the need to establish the scope of the special education program. Includes 10 references. Attached are comments on agency responses.(PB)

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BUDGET REVIEW AND ANALYSIS OF THE SPECIAL EDUCATION PROGRAM

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the

Legislative Auditor of the State of Hawaii
Honolulu, Hawaii

EC 231595

Report No. 89-6
January 1989

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FOREWORD

Budget review and analysis of selected state programs has been a legislative directive to the Legislative Auditor since 1981. The 1988 Legislature chose the special education program to be reviewed in the current cycle.

Financial support of the special education program is primarily a state function. The major portion of funds for the program is appropriated to one program, EDN 107, the special education program administered by the Department of Eduction. However, education and related services are also provided to special education students through many other programs in state government. Legislative concern over the funds being appropriated and the uncertainties of various program issues led to the request for increasing this budget review and analysis.

The results of our examination are presented in this report. A preliminary draft of the report was circulated among the departments affected by our recommendations. Responses from the Department of Education and the Department of Accounting and General Services follow Chapter 3.

We wish to express our appreciation for the cooperation and assistance extended to our staff by the officials and staff members of the Department of Education, the Department of Health, the Department of Accounting and General Services, and the Department of Human Services.

Newton Sue
Acting Legislative Auditor
State of Hawaii

January 1989

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Chapter 1

INTRODUCTION

This budget review and analysis of the special education program was undertaken in response to a legislative request in the Supplemental Appropriations Act of 1988. Section 119 of Act 390, SLH 1988, provides that the budget review and analysis include an assessment of federal and state requirements for special education and the fiscal impact of those requirements.

Objectives of This Budget Review and Analysis

The objectives of this budget review and analysis are:

1. To determine the full extent of the resources devoted to the special education population;
2. To assess whether these resources are appropriately allocated in terms of federal and state requirements; and
3. To offer alternatives and make recommendations on resource allocations for special education.

Organization of the Report

This report consists of three chapters. Chapter 1 is this introduction. Chapter 2 presents background information for this budget review and analysis. Chapter 3 discusses selected budget and program issues.

Chapter 2

BACKGROUND

The special education program is unlike any other public education program in terms of the legislative and judicial forces which shape it. In this chapter we present brief descriptions of the major requirements and guidelines established by federal and state legislation, federal and state court cases, and state education planning. We then describe the State's special education program.

Early State Special Education Program

Statutory basis established by the Territory. Hawaii assumed a statutory duty in 1949 to provide instruction, facilities, and services to all exceptional children--those who deviate from the so-called "normal" person to such an extent that specialized training, techniques, and equipment are required for their education. The Territory's Department of Public Instruction was assigned the responsibility to provide direct services and cooperate with other state agencies and with the federal government in serving exceptional persons up to age 20. The statute, now codified as Chapter 301, HRS, provided for an organizational unit within the Department of Public Instruction specifically for the promotion, direction, supervision and control of the special education program.

In the next two decades, the Department of Public Instruction and its successor, the Department of Education (DOE), proceeded to offer a special education program but on a fairly limited scale. During the early 1970s, as parents became more aware of the educational rights of their handicapped children, several private, nonprofit groups were contracted to provide programs that DOE was not able to offer "in house."

The Silva commitment. *Silva v. the Board of Education, State of Hawaii, et al.*, a landmark state case filed in 1974 resulted in a consent agreement about the same time as the federal initiatives on special education. The consent agreement signed three years later reflected the major federal legislation passed in 1975.

The Silva case reaffirmed the 1949 state commitment to special education and secured the State's agreement to more specific elements in an educational program for handicapped students. These included early identification of suspected handicapping conditions, early and prompt

provision of educational programs and services, individualized program plans for each handicapped student, maximum interaction of handicapped students with the regular school population, and others. "Related services" were to include transportation and other developmental, corrective, and supportive services, including evaluation, therapy, speech training, psychological services, and any other services to assist an exceptional child to benefit from special education.

Federal Involvement and Requirements

Public Law 94-142, The Education for All Handicapped Children Act of 1975, is often mistakenly regarded as the sole federal legislation on behalf of handicapped students. In fact, it was preceded by federal support of the education of handicapped children in the form of grants for training professional personnel and for research and experimental projects.

Impetus of the civil rights movement. The Civil Rights Act of 1964, with its equal rights and desegregation mandates, served as the catalyst for education advocates to seek comparable federal mandates for disadvantaged students. An early success was the passage of the Elementary and Secondary Education Act of 1965 followed by legislation in 1968, 1969, 1970, and 1972 which created new programs, earmarked funds for specific handicaps, and set aside slots in other programs for handicapped children (e.g., the Head Start programs).

Judicial bases established. Parents of handicapped children and their advocates also turned to the judicial system to obtain educational services. Two important cases established their rights in 1972. *Mills v. Board of Education of the District of Columbia* and *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* both established the right to education of handicapped children. The Mills case covered a broader range of handicaps, but the PARC case also established the principle of least restrictive alternative--that students should be educated with nonhandicapped students to the extent their handicaps permit.

Antidiscrimination protections extended to the handicapped. The Rehabilitation Act of 1973 (PL 93-112) was the first civil rights law that specifically protected the rights of the handicapped. Section 504 reads:

> "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[1]

Section 504 reaffirmed every handicapped child's right to a free, appropriate education. Noncompliance with Section 504 places in jeopardy all funds administered by the Departments of Education and Health and Human Services.

Landmark legislation: PL 93-380 and PL 94-142. The Education Amendments Act of 1974, PL 93-380, is considered one of the major pieces of legislation concerning the education of handicapped children and sets the basic framework for PL 94-142 a year later. PL 93-380 declared a national policy on equal educational opportunity, the right to an education to meet an individual's full potential without financial barriers. The act established procedural safeguards and legislated the principle of least restrictive environment. The act's Buckley Amendment gives parents access to student records and the right to correct false or misleading information.

The Education for All Handicapped Children Act of 1975, PL 94-142, is the most comprehensive federal law on the education of handicapped children. PL 94-142 requires a free, appropriate public education for handicapped children and youths aged 3-21; guarantees due process in identification, evaluation, and placement; requires a written individualized education plan for each handicapped child; and mandates that handicapped children be educated with nonhandicapped children to the maximum extent possible. The act enumerated 11 handicaps: deaf, deaf-blind, hard of hearing, mentally retarded, multihandicapped, orthopedically impaired, other health impaired, seriously emotionally disturbed, specific learning disabled, speech-impaired, and visually handicapped.

Providing the entire spectrum of services and programs for the handicapped students, however, is the responsibility of local education agencies. The federal government provides limited assistance. Local education agencies are also responsible for monitoring compliance with the law. Some states resisted this mandate for some time; the last one, New Mexico, finally acceded in 1984.

Judicial interpretation of PL 94-142. The U.S. Supreme Court was presented with its first opportunity to interpret PL 94-142 in *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley ex rel. Rowley*. The Rowley case focused upon the term "appropriate," especially in terms of "appropriate related services," in the case of a deaf student whose parents sued for a qualified sign language interpreter in all her academic classes.

The Supreme Court established the "Rowley Standard"--that the intent of Congress was to identify, evaluate, and provide access to enable a child to benefit educationally, and that the school system is not obligated to provide all possible related services in order to maximize the potential of handicapped students when it did not do so for nonhandicapped students. In Hawaii, Chapter 301, HRS, requires the state to provide resources to enable handicapped students to "attain the maximum of their abilities or capacities"--a broader standard.

Additional legislative and judicial requirements. For several years after passage of PL 94-142, Congress enacted various measures which affected the education of handicapped children including vocational education legislation and preparation for post-school life. The latter will be discussed in further detail in chapter 3.

The final major piece of legislation was PL 98-199, Education of the Handicapped Act Amendments of 1983. Significant elements include: (1) expansion of the preschool incentives grants program to allow states to serve children from birth to age 3 if they wish (services to the 3-5 age group remained mandatory); (2) a new grant program for nonprofit organizations to assist parents of handicapped children; (3) a new grant program for transitional services and improved secondary special education; (4) new studies and evaluations, including one concerning vocational education; and (5) the reestablishment of a National Advisory Committee on the Education of Handicapped Children.

Several other issues that have arisen cause educators to veer towards more expansive special education programs. The issue of permissible disciplinary action against special education students has been a contentious one for schools. Several cases have established that short-term emergency suspensions and nonemergency suspensions up to 10 days are permissible without due process, but recent cases have set new limits. In the California case of *Honig v. Doe*, the Supreme Court ruled that a student who is dangerous to self or others cannot be expelled or suspended beyond 10 days without all the procedural safeguards, for this would be an exception that Congress did not intend.

The issue of due process--whether school systems have in fact met all the identification, evaluation, programming, and placement requirements *in timely fashion*--is important. The failure to fulfill these requirements has sometimes cost school systems the opportunity to bring substantive issues before hearings officers or the courts. School systems are thus facing the need to protect themselves with strict adherence to due process requirements, going beyond what had been the minimum documentation and activities they had once thought adequate.

School systems are likely to be affected by the 1986 federal legislation that requires school systems to pay parents' attorneys' fees and all costs when parents prevail in special education cases, including local hearings. The costs of bringing in experts, ordering evaluations, and any other avenue taken by parents to prevail must be paid by the school systems. But the reverse is not authorized--if the school systems prevail, the parents need not pay the schools' costs.

State Planning for Special Education

The broad curriculum for the special education program is laid out in the State Education Plan, the Foundation Program, and the State Plan for Special Education.

The State Education Plan. In 1978, Hawaii enacted the Hawaii State Planning Act to guide long-range development of the State and serve as the basis for setting priorities and allocating resources. The Hawaii State Plan, codified as Chapter 226, HRS, sets out as the State's objective for education a variety of educational opportunities to enable individuals to fulfill their needs, responsibilities, and aspirations. To attain this objective, nine policies are established, including policies to provide educational programs to acquire basic skills, to enhance personal development, to prepare for jobs, to assist disadvantaged individuals, and others.

The State Education Plan, a functional plan required by the Hawaii State Plan, recommends implementing actions in four groups of educational objectives and policies: (1) personal skills and knowledge, (2) employability and the economy, (3) social and natural resources, and (4) educational support services. Some that apply to special education include the recommendation that DOE continue its policy of emphasizing basic skills and life-role competencies by such actions as pursuing intensive basic skills instruction, emphasizing instruction for grades 7 and 8, and improving the understanding of factors that lead to differences in student performances. Another recommendation emphasizes functional and economic independence for handicapped students to attain the objective of assisting individuals to meet job qualifications.

The Foundation Program. A planning framework for special education has also been established in the 1969 Master Plan for Public Education in Hawaii, in which the Board of Education committed public schools to providing equal opportunities in education for all students. Then the 1971 Foundation Program spelled out in greater detail what this meant in terms of objectives and minimum school level programs, activities and services.

The eight objectives of public education, redrafted in the 1985 Foundation Program document, are:

1. Develop basic skills for learning and effective communication with others;
2. Develop positive self-concept;
3. Develop decision-making and problem-solving skills;
4. Develop independence in learning;
5. Develop physical and emotional health;
6. Recognize and pursue career development as an integral part of personal growth and development;
7. Develop a continually growing philosophy that reflects responsibility to self as well as to others;
8. Develop creative potential and aesthetic sensitivity.

The document identifies performance expectations at several grade levels to tie the objectives to demonstrated student behavior. It also incorporates "essential competencies"--the proficiencies considered necessary to function in the adult world. Students must now pass a test to demonstrate their mastery of the essential competencies in order to graduate from public high schools.

The State Plan for Special Education 1987-1993. The DOE has periodically issued program plans for special education as it has for other programs. The current plan, issued in August 1988, is the fourth in the special education series. It is a slight revision of a plan issued in 1987.

According to DOE, the purpose of this plan is to set forth the department's philosophy and direction for the education of handicapped children until 1993. That direction focuses upon a number of goals:

- planning for the adult lives of the handicapped, called transition planning;
- planning for early childhood identification and services;
- expanding the use of technology for management and instruction;
- providing support services in regular classrooms;
- assisting special education classroom teachers to meet the requirements for individualized education plans, to formulate transition plans, and to increase their instructional time;
- using the most promising practices for the moderately and severely handicapped;
- promoting parent involvement;
- developing a comprehensive personnel development system;
- developing a program evaluation system; and
- providing administrative and support services.

The plan contains a summary of recommendations which lists the following actions through school year 1988-89: (1) implement assistance in regular classrooms; (2) revise staffing standards; (3) complete a study on the sensory impaired; and (4) develop standards for administrative and support positions. In addition, by August 1989 the plan recommends the start of development of transition goals for students aged 15 and older. Other activities are recommended to be undertaken continuously. According to DOE staff, this plan *is* serving as the basis for its programming and budgeting for six years. The discussions of the next chapter will touch upon the elements of this plan.

State Program for Special Education

The State's special education program is delivered primarily by the DOE. The Department of Health (DOH), Department of Human Services (DHS), and the Department of Accounting

and General Services (DAGS) play smaller supporting roles. In this section we describe the DOE's organization for delivering special education, the elements of its special education program, and the activities of the other organizations.

DOE organization for special education. The special education program is provided in DOE through two lines of authority from the state to the school levels.

State level leadership. Program responsibility and leadership for special education is assigned, in descending order, to the superintendent of education, the assistant superintendent of instructional services, the special instructional programs and services (SIPS) branch director, and, finally, to the educational specialist III for the special education section. The educational specialists II in this section are nominally assigned to handicap categories: speech/language/ hearing, mental retardation, emotional/autistic, specific learning disability, and physical handicaps. The specialists are also assigned to specific programs, such as vocational education and contested hearings. Other staff include federally funded contract hires for the inservice program and the laptop computer project.

The psychological and school social work services program is no longer part of the special education section. It is the responsibility of the student personnel services section.

Administration and direct services at the district level. Situated between the state and school levels, the district offices both support and provide direct services. The district educational specialists supervise a variety of support and direct services providers. The staff include resource teachers, program developers, teacher liaisons, coordinators, itinerant teachers, program assistants, and aides, among others. District educational specialists also supervise the child study teams, also called special services teams or diagnostic teams, which consist of speech pathologists, psychological examiners, psychologists, educational evaluators, resource teachers, social workers, and diagnostic prescriptive teachers. There are approximately 327 district special education personnel.

Direct services at the schools. Each school is led by a principal (except for the very smallest, which are led by supervising teachers). If there is more than one vice principal, the special education program is specifically assigned to one. Whether elementary or secondary, special education teachers by and large are in a separate special education department. In the larger high schools, there is some subject matter specialization within the special education department.

Special education instruction and related services are delivered at the schools by teachers, educational assistants, district personnel, and non-DOE agencies. In the current school year, 841 of the special education teachers hold special education teaching certificates issued by DOE. This means they have completed a master's degree program in teaching handicapped students.

However, another 117 teachers are not certified in special education and an additional three teachers are not certified in any area. The educational assistants are classroom aides with a minimum of a high school diploma who are part of the State classified civil service system. Occasionally, they serve as classroom teachers in summer school when certified teachers of any kind are not available.

Assignment of authority. As with other programs, the special education program flows through two lines of authority: (1) operational authority, from the superintendent through the district superintendents to the school principals; and (2) staff authority, from the superintendent through subordinates at the state office. As staff to the superintendent, units of the state office generally have no authority over district offices and schools. At the district level, likewise, district staff report to the district superintendent and have no direct authority over schools.

Thus, for example, a proposal for a statewide change in the special education program would be developed in the state special education section and approved upward through the assistant superintendent of instructional services to the superintendent. If approved by the superintendent and by the Board of Education, the responsibility and authority to implement that program would proceed downward from the superintendent to the district superintendents and the principals. The educational specialists and the district superintendent's staff assist in the implementation. The district staff may also develop program proposals for application in that district only with the approval of the district superintendent.

Decisions on budgeting and expending financial and personnel resources follow the same pattern. The state level special education section develops budget requests, the budget office within the superintendent's office reviews the requests, the superintendent makes recommendations to the board with the assistance of the district superintendents and assistant superintendents (informally called the superintendent's leadership group), and the board submits the request to the Department of Budget and Finance.

After the lower education budget is appropriated, the DOE budget office, with the approval of the superintendent, notifies the districts of their respective allocations. Each district decides how the positions and supply and equipment funds shall be allocated among its schools. At the schools, principals assign teachers, set course schedules, and divide up the supply and equipment funds.

The elements of the special education program. ***Special education enrollment.*** DOE's enrollment for grades K-12 as of September 13, 1988, is 167,227, of which 9214 were special education students. In addition, another 81 students are in regular pre-kindergarten classes and 261 pre-kindergarteners are in special education. In the 1977-78 school year, when PL 94-142

was beginning to make its impact, DOE reported 7858 special education students among a public school population of 172,181. Thus in the past decade the numbers of special education students have increased while the total enrollment has declined. Table 2.1 presents information on the number of special education students and the kinds of handicapping conditions as of December 1987.

Table 2.1

Students Receiving Special Education in Hawaii
As of December 1, 1987

PL 94-142 Handicap Categories	No.	Percent
Mentally retarded	1,086	10.10
Hard of hearing	136	1.26
Deaf	57	.53
Speech or language impaired	1,963	18.25
Visually handicapped	60	.56
Seriously emotionally disturbed	592	5.50
Orthopedically impaired	211	1.96
Other health impaired	75	.70
Specific learning disabled	6,452	60.00
Deaf-blind	3	.03
Multihandicapped	119	1.11
Totals	10,754	99.99

Source: Department of Education, Education of the Handicapped Act Part B Child Count Report to U.S. Office of Education, Special Education Programs, February 11, 1988.

The special education population is served by a program more easily understood in terms of the four major steps set out by PL 94-142: (1) identification, (2) evaluation, (3) programming, and (4) placement. To ensure compliance with PL 94-142, DOE enacted Chapter 36, Title 8, of the Administrative Rules of the DOE, titled "Provision of a Free Appropriate Public Education for Exceptional Children Who Are Handicapped" which defines these four steps.

Step 1: Identification of special education students. Students are identified as possibly needing special education in several ways. If they are already in school, teachers and other school personnel may begin the referral and evaluation process. A parent or anyone else having contact with a child may also initiate a request for evaluation. Or the child may be found as part of a

federally-mandated "child find" program. DOE has used TV, newspaper ads, posters, and other means to seek out handicapped students, emphasizing their right to education at no cost to parents.

Step 2: Evaluation. Within 20 days after receiving a referral of a suspected handicapping condition, the principal must notify the parent if an evaluation seems warranted, obtain parental consent to the evaluation, and transmit the referral request to the district superintendent. Assessments are done by the district child study teams. DOE may contract out portions of the assessment when it does not have the in-house capability. As necessary, a student is referred to DOH for psychological or medical evaluation. DOE is required to complete the evaluation within 80 days from the district's receipt of the request for evaluation.

A parent may also obtain an independent evaluation at the parent's expense. If the parent disagrees with DOE's evaluation, the case may be taken before a hearing officer. If the parent prevails, the cost of the independent evaluation becomes a public expense.

Step 3: Programming. This phase entails planning the student's educational objectives and curriculum with the participation of the parent, the student if appropriate, child study team representatives, the principal or designee, the special education teacher, an interpreter if necessary, and any others invited by either the parents or DOE. Sometimes parents invite advocates provided by support organizations. The conference must occur within 30 days after the certification of eligibility. The resulting plan, as required by PL 94-142, is the individualized education plan--the IEP.

Federal law requires annual IEPs. They are drafted by the special education teacher to whom the student is assigned. In the high schools with large special education enrollments, the teachers divide the IEPs among themselves even though they may not teach those students that year.

Schools report that the IEP process is extremely time consuming. It is often difficult to arrange an IEP meeting with parents. Schools must sometimes resort to sending registered letters. And even then schools may finally proceed to hold an IEP conference without the parents.

The IEP process is said to be contributing to the teacher burnout problem in special education. Teachers sometimes are each responsible for 20 or more IEPs each year although some have as few as five. In some schools parents often seek meetings during nonworkday times. Some teachers accede, with no adjustments in their regular workday.

The paperwork that the IEP process entails prompted a new provision in the current teachers' collective bargaining contract. DOE agreed to make micro-computers available to special education teachers within budgetary limitations. Laptop computers and printers are now being installed with federal funds.

Step 4: Placement. Upon consensus on the IEP, the district or school assigns the student to a class or a program in a school. Placement must be in the least restrictive environment, determined annually, based on the IEP, and as close as possible to the student's home.

Types of placement arrangements. DOE offers five configurations of special education services:

- full time self contained: the handicapped student remains with the special education teacher(s) for the entire school day or for all but one period;
- integrated self contained: the handicapped student spends half of the school day with the special education teacher(s) and the rest of the day in regular education;
- resources services: the handicapped student spends one period each day in special education and the rest of the day in regular education;
- itinerant services: the handicapped student receives special education or support services for one period each week;
- support services: the handicapped student receives indirect services, or consultation, on his or her behalf for one period per week.

Table 2.2 displays the distribution of the 1987-88 special education enrollment in these placement arrangements. The principal assigns the teachers and educational assistants to the various configurations, balancing the needs of the students as determined in the IEP process with the resources available (including facilities and teaching space).

Table 2.2

Placement of Special Education Students
By Educational Arrangements, FY 1987-88

Extent of Special Needs	Full Time Self Contained	Integrated Self Contained	Resource Services	Itinerant Services Or Support Services
Mild	1401	3787	2047	98
Moderate	564	94	95	69
Severe	1006	153	68	33
Totals	2971	4034	2210	200
Percentage	32%	43%	23%	2%

Source: Department of Education, Initiative: Staffing Goals for State-Funded Special Education Instructional Positions, November 1987.

During the past year DOE has developed a new schema for assigning staff and placing students. In this schema, the focus has shifted from handicapping condition as a basis for placement to "extent of special needs"--i.e., the need for individualized instruction. Depending on which of the educational configurations is selected for the student, and whether the handicap falls into the mild, severe, or moderate level of need, a weight is assigned to the student. The weights range from 1.0 for a student with mild needs in an itinerant services arrangement to 5.2 for a student with severe needs in a full time self contained arrangement. With DOE's collectively bargained staffing ratio of 26.15 students per teacher, this means that a special education teacher with a full time self contained assignment may have five students with a variety of handicaps but all with severe needs (5 x 5.2 = 26). Educational assistants are generally allocated on the basis of .5 position per teacher and assigned mostly to teachers with full time self contained arrangements.

Department of Health services (DOH). The DOH, primarily through its school health services branch, provides health services to nonhandicapped as well as handicapped students in public and selected private schools. These services can be broadly categorized: screening for specific health risks and conditions; preventive education; direct ministration and therapy; evaluation; and consultation.

In terms of services to all students, the most visible DOH presence in the schools is the school health aide and, to a lesser extent, the school health nurse. With one aide per school and one nurse per DOE complex, DOH provides first aid, selected screening, monitoring of immunization records, administration of medication, health education, and health counseling.

Of these functions, the administration of medication is perhaps the most closely related to special education. Teachers and other DOE personnel are not authorized to supervise or administer medication. Students who need to take medication during the school day must be sent to the health room, where the medication is stored, and take it there under the supervision of the health aide. In FY 1986-87, DOH reported 607,790 visits to the health rooms. Of this number, 58,849 visits were for the administration of medication. Of these, 10,185 were self administered and 48,664 were aide-administered.[2] DOH estimates that 10 percent of the cost of the school health services program could be assigned to the special education program; this would total $342,100 in FY 1987-88.[3]

Services to handicapped students. Section 301-27, HRS, specifically requires DOH to provide to exceptional public school students the related services of occupational therapy, physical therapy, school health, mental health, psychology, and medical services for evaluation or diagnostic purposes and that these services shall be provided within the funds available.

The school health services branch of DOH is staffed for this purpose by occupational therapists, physical therapists, and medical social workers. In FY 1987-88, these three programs cost $1.47 million. Based at the schools, teams of DOH staff provide both direct services to the handicapped students and consultation to their teachers. According to DOH, the following numbers of special education students were served in 1987-88:

- 1,526 received occupational therapy services;
- 950 received physical therapy services;
- 83 received social worker services.[4]

In addition, 14 licensed practical nurses and two special needs nurses provide such services as catheterizing and suctioning to severely multiply-handicapped students.

Department of Accounting and General Services (DAGS). A key related service for handicapped students is transportation. DAGS, through its student transportation services branch, provides home-to-school-to-home and any other off campus transportation called for by the student's individualized education plan. For nonhandicapped students, DAGS also provides curb-to-curb service if students live more than a mile from school or under exceptional circumstances.

DAGS provides this transportation in several ways. Most of the curb-to-curb service is provided by specially equipped vans under state bus contracts. During the day, as individual students or groups of students must be moved off campus for such purposes as vocational programs, adaptive physical education, evaluation, and the like, DAGS contracts for more van or bus services. DAGS may even hire taxicabs as warranted.

Department of Human Services Program (DHS). Since 1969 DHS has operated the Special Education-Vocational Rehabilitation Program in DOE schools. This is a three-phase classroom-to-community program intended to prepare disabled students aged 16-20 for eventual employment.

Prior to beginning this program, the Division of Vocational Rehabilitation had found that many of the students could not be traced after DOE's jurisdiction terminated when handicapped students reached age 21. Besides, it wanted to begin earlier with academic, social and vocational skills so that the young adults could move more easily into work situations.

For school year 1987-88, the program served 520 of the 678 projected for the year. It reported that 137 completed school during the year, and 79 percent of them achieved their educational-vocational goals.[5]

Chapter 3

SELECTED BUDGET AND PROGRAM ISSUES

The special education program is a difficult program to operate, administer, and budget. It is governed extensively by federal and court-ordered requirements. In this chapter we discuss selected budget and program issues in an attempt to apply some conventional criteria to budgeting and programming for special education.

Summary of Findings

We find the following:

1. The costs of the program are substantial but the Department of Education has not taken the lead in attempting to identify or to control the costs.
2. The DOE has yet to delineate the parameters of its special education program.
3. The DOE's budgeting practices for special education are questionable.
4. The special education program in the field varies considerably, and top-down program expansions do not necessarily reflect school and district needs and preferences.

Substantial Costs of the Special Education Program

The cost of the special education program that the State provides in response to the requirements described in Chapter 2 is substantial. We estimate that the total spent in FY 1987-88 was at least $47.5 million in state funds and $2.1 million in federal funds. The bulk of this is spent by the Department of Education (DOE) with smaller amounts expended by the Department of Accounting and General Services (DAGS), the Department of Health (DOH), and the Department of Human Services (DHS).

In FY 1987-88, these funds served 9415 students, as of September 1987. Of this number, 32 percent were in special education for the entire day. The others spent various amounts of time in special education and the rest of the time in regular education. Some students received no direct services; instead, staff consulted on the students' behalf for one period a week. In FY 1988-89, the special education enrollment declined to 9214 as of September 1988.

We estimate the FY 1987-88 expenditures for special education were at least what is shown in Table 3.1.

Table 3.1

Expenditures for Special Education FY 1987-88*

Department of Education	
Classes in regular and special schools	$28,275,667
Psychological and school social work services	8,881,943
State special education administration and statewide projects	
State funds	255,613
Federal funds	778,149
District special education administration and district projects	
General funds (estimate)	392,500
Federal funds	1,359,604
Occupational skills program	521,715
Department of Health	
School health services program	342,113
Screening programs	35,524
Support services program	1,469,927
Department of Accounting and General Services	
Transportation	7,059,376
Department of Human Services	
Vocational rehabilitation services	229,154
Total	$49,601,197

*State funded expenditures except where noted.

Sources: Department of Education expenditure reports, estimates provided by staff, accounting records; Department of Health memo to Legislative Auditor; Department of Accounting and General Services memo to Legislative Auditor; Department of Human Services memo and expenditure reports.

The DOE has not taken the lead in identifying and compiling the costs of the State's special education program. The costs we identified in the above table do not include a number of significant items: (1) State-funded district administration costs shown are salary costs only for educational specialists and their secretaries. All other costs, even though incurred by special education district staff, such as for supplies and mileage, are incorporated in other district budgets and could not be separately identified; (2) General administration costs at any of the organizational levels have not been apportioned to the special education program; (3) Support services, such as the maintenance and school lunch programs, have also not been apportioned.

The psychological and school social work services program is available to all students. But the bulk of its work deals with special students--both in certifying those referred for the first time and in reevaluating each certified student at least once every three years. Approximately 75 percent of the referrals result in certification. The teams must be available to fulfill the requirements of the evaluation step.

Lack of analysis of special education costs. The DOE has not analyzed the cost of the special education program partially because unlike other school systems nationwide it has not had to seek state per capita funding for special education or for regular education. Little attention is paid to defending either regular or special education per pupil expenditures because there is no need to compete with other school districts within the state.

The state office calculates per pupil costs for federal reporting purposes, to prove to the federal government that Hawaii is indeed supplementing and not supplanting state funds with federal funds, but nothing else is done with this information. It is not used for budgeting purposes; it is not analyzed for comparison with other school systems; it is not assessed for reasonableness. There are no contiguous states, of course, to draw easy comparisons. Indeed, there is no ranking system to compare school systems' or states' expenditures for special education as there is for regular education.

DOE does no analysis of the per pupil cost by handicap or by educational arrangement. The legislative request for this budget review and analysis stemmed from the difficulty that legislators had in determining the total cost of special education and the bases for resource allocations.

It would be useful to have per pupil costs for special education for management purposes. This has been done in other jurisdictions. Several studies have concluded that it costs up to two or more times to educate a handicapped child than a nonhandicapped one.[1] In a study of five school districts across the country in 1982-85, it was found that the same proportions applied even as the districts ranged widely in their expenditures. For example, in Charlotte-Mecklenburg, North Carolina, while the per pupil expenditure was $2570, the special education expenditure

was $5684; in Milwaukee the respective figures were $4242 and $7482; in Rochester the district spent $4228 on each student and $7733 on each special education student.[2] DOE should develop some per pupil and other calculations for Hawaii and subject them to analysis.

Special education program operated with open-ended funding. Table 3.2 shows the appropriations for EDN 107, the program budget category by which most of special education is funded.

Table 3.2

Appropriations to EDN 107
FY 1983-84 Through FY 1988-89

Fiscal Year	Appropriations
1983-84	958.00*
	$25,543,399 state general funds (A)
	23,126 special funds (B)
	3,744,479 federal funds (N)
1984-85	963.50*
	$25,555,283 (A)
	23,126 (B)
	3,754,479 (N)
1985-86	895.00*
	$23,479,267 (A)
	56,800 (B)
	3,704,042 (N)
1986-87	898.50*
	$24,484,708 (A)
	56,800 (B)
	4,004,042 (N)
1987-88	847.50*
	$25,491,118 (A)
	20,000 (B)
	4,769,600 (N)
1988-89	1,216.00*
	$30,633,258 (A)
	20,000 (B)
	4,769,600 (N)

*Permanent positions.

Sources: General and Supplemental Appropriations Acts, 1983 through 1988.

The number of positions actually in place over the past five years has consistently exceeded appropriations because of past DOE policy on the creation of temporary positions. The DOE has had four superintendents since the enactment of PL 94-142. The first three adopted the policy of creating special education classroom positions as needed, using the positions in the superintendent's reserve and/or turnover savings from throughout the departmental budget. All the positions thus created were temporary. For FY 1988-89, 116 of 961 special education teachers and 193 of 502 educational assistants are in temporary positions.

Temporary employees earn the same fringe benefits as permanent employees. But temporary employment presents a number of disadvantages to both the employee and the department.

From the perspective of the employees, these are tenuous jobs. They have no reemployment rights. Special education certificate holders and regular certificate holders teaching in temporary special education positions request transfers to other schools at the earliest opportunity. We found 10 to 15 percent annual turnovers in special education that principals attributed to the temporary nature of the positions.

The problems with temporary employment in turn have led DOE to make numerous attempts to secure legislative conversion not only for special education positions, but for all temporaries in the department. Although the availability of the temporary appointment has given DOE some benefits--additional teaching positions without legislative authorization or gubernatorial controls--DOE officials believe the disadvantages outweigh the advantages at this point. In 1988 DOE sought legislative approval to convert many of these positions to permanent status as well as secure additional positions according to its new staffing goals.

The DOE sought additional positions beyond what had been incorporated in the official budget request. The Legislature accepted most of DOE's requests, approving 353.5 more positions and $5.1 million beyond what had already been appropriated for FY 1988-89. The net effect was a program expansion of 76 teachers and 72 educational assistants because the new funds made permanent 205.5 temporary positions already in the schools. The funds which had paid for these temporary positions were thus freed for other departmental purposes. For the current school year, the special education program in regular and special schools (budget category EDN 107) has been appropriated a total of 1216 permanent positions and $30.6 million in state revenues.

In allocating these positions for the beginning of the 1988-89 school year, the superintendent held back 20 teachers and 10 educational assistants in the superintendent's reserve. These will be distributed at the end of the first semester according to actual enrollment experience. More

importantly, in a departure from the past, the superintendent clearly informed the districts and schools that any staffing adjustments for special education classes must be made *within* the allocated resources.

We believe this is a good start. Open-ended budgets invite generous interpretations of need. DOE budget officials report that in prior years, they had to scramble to cover shortfalls in the special education budget, as teacher positions had been created in the districts without regard for the funds to pay for those positions. The authorized position count was irrelevant.

However, the State should not have to depend on a superintendent's inclination or ability to hold spending to appropriated levels. The apportionment of state revenues among myriad programs is a legislative prerogative. While executive agencies need some flexibility to react to changing needs, flexibility should not be so broad as to permit positions to be created at will. The Legislature may need to consider language in the appropriations acts to limit the executive branch's authority to establish temporary positions.

Funding for administrative support. DOE attempts repeatedly to convert federally funded administrative positions to permanent state funded positions. This is not justified at present.

The special education section, although it is a staff unit and not a line unit with operational authority, in effect controls the allocation of both federal and state funds for special education (except for salaries).

In the case of federal funds, two kinds of resources come to the State: (1) per capita federal support, by handicapping condition, which can be used for both administrative costs and special programs; and (2) specific grant funds, for federally determined purposes such as preschool and vocational education. For FY 1988-89, the per capita funds amount to $3,174,706. Of this sum, the special education section assigned $469,200 for state purposes and divided the rest among the districts as shown in Table 3.3. The districts are using their funds for staff, supplies, laptop computers, and other equipment. Each project must be approved by the state special education section.

Special education administrative positions are funded by both State and federal sources. DOE routinely attempts to convert the latter to state funding on the grounds that federal positions are temporary, the program will continue to exist for the foreseeable future, and reliance on federal funds is a tenuous proposition.

The Legislature can expect to face these kinds of requests again. There appear to be insufficient grounds for the State to assume the costs so long as they are funded by the federal government.

Table 3.3

Allocation of PL 94-142 Funds FY 1988-89

District	
Honolulu	$ 482,121
Central	552,464
Leeward	541,101
Windward	407,990
Hawaii	363,350
Maui	232,403
Kauai	126,077
Subtotal	$2,705,506
Office of Instructional Services	469,200
Total	$3,174,706

Source: Department of Education, Operational Expenditure Plans, FY 1988-89.

Need to Establish Scope of Special Education Program

The DOE will not be able to budget properly for special education until it has a clearer idea about the scope of the State's special education program. The question, "What is special education?" is still being raised. The questioners ask how each handicap category is defined, how valid are the evaluations, how effective are the special arrangements and all other special provisions.

Nationally, concerns over this issue are voiced even by supporters of special education who note the tenuousness of the special education label. One of the more notable is James E. Ysseldyke, who states:

> "Most of the writing on classification consists of opinion rather than research. Sometimes the opinion is data based, often it is not. The same data are used to support opposite views on classification, so that statements on this topic appear to be derived more from one's beliefs than from empirical evidence."[3]

Ysseldyke goes on to present others' arguments against classification--that it creates stigma to students, it leads teachers to hold lowered expectations, it has often led to dead-end placement,

it can lead to a social hierarchy, and others. The alleged positive effects of classification are few, and Ysseldyke concludes that the only acceptable one is that classification is tied to legislation and leads to obtaining funds.[4]

The disproportionate representation of ethnic minorities, males, and low income groups and the high numbers certified in the more subjectively determined categories concern others. Claims that black students have been disproportionately treated in special education have led to several landmark court cases, such as *Larry P. v. Riles*. In this case, the court found that the standardized intelligence tests used in assessing black students as educable mentally retarded were racially biased. Hawaii may have similar circumstances. Hawaiian and Part Hawaiian, Samoan, and Filipino students comprise higher percentages of the questionable special education categories compared with their overall student representation.

One questionable category, "learning disabled," was a problem even when PL 94-142 regulations were being drafted. Concerned that the learning disabled category was subject to variations in interpretation, the drafters tried to limit the proportion of the school enrollment that any state could designate as learning disabled. But the numbers and proportions of students certified in this handicap category have continued to rise.

In 1976-77, the learning disabled nationally constituted 1.8 percent of the school population. In 1985-86, they were 4.7 percent even as the numbers of students in other handicapped categories declined. This proportion represented 1.86 million learning disabled students in 1985-86, or 43 percent of the special education population nationwide.[5] The learning disabled student in proportion to all other handicapped students ranged from 30 to 67 percent among the fifty states and from 0 to 73 percent among 30 large cities.[6]

In Hawaii the learning disabled are 60 percent of the special education enrollment. Some DOE officials are concerned about these proportions. We were informed that different diagnostic teams assess students differently, even within the same district. Some principals indicated that they can predict how a student will be evaluated if they know who will do the diagnosis.

There is a need for the DOE to review the basic issue of the scope of special education. All four steps of special education required by PL 94-142--identification, evaluation, programming and placement--remain controversial. The DOE should examine its operations to reach some agreement on this basic issue. Some implications of this issue that have a major impact on costs that remain unresolved are workload, summer school, and support services provided by other departments. The scope of these have yet to be resolved.

Workload criteria remain unclear. A key component in determining the scope of a program is how workload will be defined and how these demands will be met. In special education, the collectively bargained regular education ratio of 26.15 students per teacher has been modified, but it is not clear in what way and to what degree this has been done. The extent to which the DOE's 1975 staffing standards were actually met has never been determined, there's some confusion about its 1987 staffing goals, and finally, the new basis for determining staffing ratios has not been clarified.

1975 staffing standards. DOE established staffing standards for special education in 1975. It is not known whether these standards were met or exceeded in every school. Both legislative staffs and staffs at the Department of Budget and Finance had difficulty in determining actual staffing ratios because of the creation of temporary positions. Consequently, DOE's current services ratio became the basis for requesting more positions each time. For example, if the reported actual ratio is, say, 13, even though the official ratio was 15, DOE would calculate its projected needs for the next year on the actual ratio of 13. As it created more positions disproportionately to increases in special education enrollment, the actual ratio would drop further, becoming the new basis.

These were statewide ratios and were used for purposes of budgeting. Actual teacher-by-teacher ratios ranged widely depending on handicaps and educational configurations in each school. Some teachers complained that their workload was too great, writing individualized education plans and meeting with parents were too time consuming, and 1975 staffing standards were outmoded, etc. Those with resource room arrangements, who saw each special education student for one period a day, said they had to prepare many more individualized education plans than a teacher with a full time self contained class of five to eight students.

1987 staffing goals. In November 1987, DOE presented the Board of Education with *Staffing Goals for the Allocation of State-funded Special Education Instructional Positions*, which it approved. The staffing ratios were *goals*, not standards. DOE officials confirm that these are desired ratios, not ratios that the department is promising teachers, or obligating itself to achieve immediately. We found some misunderstanding in the schools on this matter and some dissatisfaction that the "promised ratios" had not materialized. The large budget expansion that the 1988 Legislature authorized brought DOE to 92 percent of its goals. DOE did not seek more because it had no room for more. In visiting schools, we found special education classes being held in a shed scheduled for demolition, in the entryway portion of the teacher's bathroom, and in other nooks and crannies for lack of space.

New basis for allocating positions. In February 1988 DOE issued a companion document to its special education staffing goals document. *Implementation Procedures for the Allocation of State-Funded Special Education Instructional Positions* sets out the procedures by which new or continuing positions will be allocated among the schools, the weighting procedure that meshes the extent of special needs with the educational arrangement, and the various forms that the respective offices are to use.

The latest document reiterates the DOE's move away from handicap categories as the basis for educational arrangements. The document states: "Instead of determining staffing ratios on the basis of the students' handicapping conditions, the basis used is the 'extent of special needs' for specialized instruction. This direction is translated into a system of recognizing differentiated student needs by using relative weights to identify the number of special education teachers and educational assistants needed in each school."[7]

However, how the "extent of special needs"--individualized attention--will be applied and reviewed for internal consistency and reasonableness is unclear. The need for individual attention is determined in the meetings for each student's individualized education plan. It can be expected that schools will try to lower the ratio as much as possible, to declare a "need" for more teachers and educational assistants. There is no evidence of analysis of the cost implications of the new approach. Nor has the DOE said how it will evaluate the effectiveness of these lowered ratios.

There seems to be little understanding and acceptance at the school level of the "extent of special needs" as the new direction. The focus is supposed to be on teaching strategies no matter what the handicap. Grouping is not supposed to be done on the basis of handicap, but what kinds of strategies the students need. However, school personnel still speak in terms of "our learning disabled integrated self contained class" or "our emotionally handicapped full time self contained class." Those who were aware of the new direction did not appear enthusiastic, and a few expressed reservations and skepticism.

DOE officials are aware of the school level problems with this new direction and expect to have to do much more inservice orientation. Whether they succeed or not, for budgeting purposes, the new staffing goals mean another net increase in teaching staff without any additional accountability from DOE.

Summer school. Summer school for special education is a potentially controversial issue with significant cost implications. In FY 1987-88, special education summer school expenditures totaled $1,158,000.

Summer school for regular students is considered optional and paid for by students and their parents except for those under family income thresholds. In the latter case, the state grants

tuition waivers to the extent funds are available. Summer school tuition is $81 for four hours per day for six weeks. In FY 1987-88, DOE received $1.2 million in summer school revenues, of which $20,000 was attributable to special education.

For special education, liberal interpretations of free appropriate public education (FAPE) mandates have resulted in large increases in summer school costs. FAPE interpretations have meant that, if "appropriate education" includes the determination that a student would regress during the summer to such an extent that more than three months' work would be required to recapture previous learning, a long enough summer school must be provided at no cost. FAPE is regarded by DOE officials to have expanded special education summer school both in terms of numbers of students enrolled at no cost and in terms of the length of the summer programs being offered. Regular summer school runs for six weeks; some special education programs run for eight to ten weeks--virtually the entire summer.

DOE started out with most of its special education students not having summer school in their individualized education plans so parents paid for summer school. But the proportions began to change with parental pressure. Initially, also, DOE officials were admittedly generous in opening classes to nonFAPE students at no charge. The distinctions between FAPE and nonFAPE summer enrollments became blurred. But as the costs have risen, DOE is now attempting to apply more stringent criteria. We believe that some clarification is needed.

Support services from other departments. The extent of services to be provided by the Department of Health (DOH) and the Department of Accounting and General Services (DAGS) have a major budgetary impact that should be clarified.

DOH services. DOH services to special education students fill only a portion of the needs. More students should be served, and most need direct contact with therapists. DOH, like the rest of the country, is faced with a severe shortage of trained therapists. To make matters worse, because of the interpretation of the federal requirement that students be placed in their home schools as much as possible, the DOH teams must travel long distances to get to some of the students. The extensive driving that becomes part of the job on the Big Island and Maui in some instances is another cause of high personnel turnover.

State DOE officials maintain that some districts may be interpreting the federal placement requirements too literally and *could* place students a little further from home if that would enable them to obtain therapeutic and other services more frequently. DOH has resorted to purchasing therapist services, even flying in private therapists to Neighbor Island communities.

The problem appears to require further discussion within DOE and between DOE and DOH on the interpretation of the federal placement requirement.

DAGS services. The cost of transporting special education students is substantial. The expenditures for special education transportation for the past two fiscal years are shown in Table 3.4 below:

Table 3.4

Transportation Expenditures for Special Education,
FY 1986-87 and FY 1987-88

	To and From School	During School	Total
1986-87	$6,634,482	$ 71,644	$6,706,126
1987-88	6,952,924	106,452	7,059,376

Source: Memo from State Comptroller, State of Hawaii to Clinton Tanimura, Legislative Auditor, November 28, 1988.

Some problems are emerging in this program because of a lack of agreed upon guidelines. DAGS sees its responsibility as limited to off campus transportation, while DOE seeks on campus transportation. At some of the schools, DOE maintains that certain students cannot move themselves, or there are no staff to move the students from one part of campus to another. Some of the campuses are hilly or the distances between buildings are considered too great for self propulsion or for the DOE staff. DAGS maintains that whatever occurs on campus is DOE's responsibility and that these are the functions of individual aides, which DAGS does not have.

The matter of off campus transportation during the school day is also emerging as a problem, again stemming from a lack of guidelines. The cost has increased by 50 percent in the past two years, as seen in the figures above. At the high schools, the occupational skills program sometimes involves job site experiences or instruction at fixed vocational centers, so special education students have to be transported off campus during the school day. For a number of years, the Windward District center was located at King Intermediate. Since 1986, Honolulu District has established an occupational skills center to which students must be bused; previously the program came to them.

Also, some teachers used to transport students to job interviews and to work sites in their own cars--but no longer do so because of the liability risks. The growth in physical education programs has also required transportation for such activities as swimming classes at off campus pools, usually county pools.

DOE has taken the position that if school-day transportation is included in the individualized education plan, DAGS must provide it. DAGS has agreed, and DAGS appears to be making an earnest effort to provide whatever is needed. But DAGS has had difficulty projecting what the demands will be like and budgeting for them. For the current school year DAGS expects its budget to be sufficient, but it has no programmatic guidelines from DOE on what to expect. Moreover, occasionally DAGS will not be notified by school officials that a program has been cancelled, and the DAGS contract bus will appear at the school only to be turned away empty.

With transportation, as with health services, we note a need for the affected departments to work together more closely, each making the others more aware of the operational difficulties involved in their respective jurisdictions. We have noted a tendency for the agencies to take a hands off position on a problem because it is ostensibly another agency's responsibility. Under such circumstances, the problem receives attention only when it becomes severe. No one will be well served if this continues.

The DOE's Questionable Budgeting Practices

The DOE budget request to the executive for the next biennial budget contained several special education items. Although the Governor's official budget request for DOE will be only a current services base plus a 4.1 percent inflation increase, the Legislature can expect to be approached by DOE with its original request to the executive. This should be reviewed critically by the Legislature because it is presenting an increase as a workload increase rather than a program change request.

The executive branch prepares its budget requests in three increments: current services, workload increase, and program change. The superintendent routinely informs all units responsible for budgeting of the definitions of these categories. In January 1988, in preparation of the 1989-91 request, he stated:

Current services "are the resources required to provide the same quality and quantity of services over the next biennial period. No new positions or additional equipment are allowed under current services."

Workload increase "provides for uncontrollable growth increases. Examples of allowable workload increases are funds needed to accommodate projected enrollment growth, and to operate new schools and other new facilities scheduled to be constructed. In general, workload increase provides for the delivery of the same quality and quantity of services to an increasing number of qualified recipients."

The *program adjustment* category, "often referred to as 'Expansion' or 'Initiatives,' includes all the resources needed to improve the quality and quantity of services, or to initiate a new program...For each expansion request, a special analytic study is required."[8]

Program adjustment requests (or program change requests) require particular scrutiny because they may commit the State to large future expenditures. They may become part of the current services budget in the next budget cycle.

The DOE requests for special education included three items: (1) 100 percent implementation of new staffing goals--62.5 teachers and 30.5 educational assistants in the second year; (2) 30 teachers to develop and implement individual transition plans--both years; (3) 3 additional teachers for the Hawaii Center for Sensory Impaired--both years.

The new special education staffing goals were applied in developing DOE's budget request for the 1989-91 biennium. As noted earlier, the large increase authorized by the Legislature in 1988 brought DOE to 92 percent of its staffing goals. The special education section sought to include the remaining 8 percent of the unfilled goal in the first year of the biennium. The superintendent's leadership group moved it to the second year reportedly in order to assess the 1988-89 deployment of the additional positions granted in 1988.

In the 1988 session, DOE had presented its request to implement the new special education staffing goals as a *program change*. DOE admitted then there was no enrollment increase; in fact, special education enrollment had declined by 200 students from the 1986-87 school year. For 1989, DOE has presented its request for the remainder of the new staffing goals as a *workload increase*. According to DOE officials, this is allowable because of enrollment growth. We do not agree. We believe DOE is referring to the same 8 percent of the staffing goals that it would like to see met, not additional staff for uncontrollable growth.

The other two requests, for 30 individualized transition plan coordinators and 3 additional teachers at the Hawaii Center for the Sensory Impaired, should also be reviewed. The transition coordinators would be new positions since DOE does not currently have official positions by that title. As we discuss later in this chapter, many questions remain unanswered in the vocational education program in which these coordinators would do some of their work. The Hawaii Center for the Sensory Impaired is a restructuring of the Hawaii School for the Deaf and Blind. In July 1988 the Board accepted a report on making this restructuring a reality. This also does not appear to be a workload increase.

The special education request should be reviewed first from the perspective of the basic issue: what is special education, what is the target group, how are the handicaps defined, etc. And more specifically, the Legislature should question why the request is included in the workload increase

budget instead of a program adjustment budget. In light of the concerns presented earlier on the staffing goals and DOE's lack of analysis of costs, there should be careful legislative review of this request.

Special Education in the Field Varies Considerably

Two other programmatic areas are being affected by emerging issues which will also impact on the special education budget. These are the *prereferral intervention* and the *vocational/post school* programs. The DOE is taking these initiatives without adequate planning and groundwork in the schools.

Prereferral intervention. Much revolves around the definition of special education and the evaluation criteria and instruments. DOE officials recognize the problems and negative consequences of certifying students into special education at the same time they see the need and benefits of the program. They are also concerned about the increased numbers of referrals for evaluation over the years, the high percentages found positive, and the burdensome deadlines and procedures. To address some of these concerns, DOE is moving to more prereferral intervention.

Prereferral intervention consists of measures taken in the period before referral is made for evaluation by the diagnostic team. It is an attempt to take informal steps before invoking the formal PL 94-41 referral process. It keeps the child in the jurisdiction of regular education.

Schools are required to have school screening committees as part of the federal requirements. Some schools call them special needs assessments committees. Their composition includes an administrator, regular teacher, special education teacher, diagnostic team representative if appropriate, and others.

The activities of the school screening committees vary considerably. Some review only potential special education referrals, others consider all problem students who are brought to their attention by regular teachers. Some assist in decisions on rescinding special education certification. Some appear to serve as pro forma gatekeepers to the diagnostic teams, approving most teacher referrals. Others expend much effort attempting to find alternative class and course assignments for all problem students, trying to avoid the special education referral for as long as possible. Often, it is reportedly difficult to determine whether a student is a better candidate for compensatory education programming or for special education.

In the context of this wide range of functions performed by the school screening committees, the state special education section has proposed a prereferral intervention initiative that has

elicited varying responses from the districts. It does not appear in the Six-Year Plan for Special Education and reportedly was first discussed at the August 1988 superintendent's seminar with administrators.

The state special education section sponsored a seminar in September 1988 which was attended by some principals and district staff. One of the major themes of the seminar was prereferral intervention. One model of prereferral intervention which was proposed was called "teacher assist teams" which involve teachers seeking help from each other on an as-needed basis.

Schools have been given the option of applying for federal grant funds to provide inservice training for their teachers on prereferral intervention. Two of the seven districts have not pushed this option. One or two are still evaluating it. The others have adopted it in varying degrees. There has been some confusion over the relationship that the teacher assist teams would have with the school screening committees. At the districts, very little was known about the idea. In our school visits, very few in the field were familiar with either the term "prereferral intervention" or "teacher assist team." It appears that a good deal more work is required on this concept.

Vocational education and post-school plans. The DOE appears to be going in several different directions in vocational education. Some of the programs work at cross purposes to each other. As laid out by the Foundation Program and the State Functional Plan for Education, the goals for all students, including special students, include self sufficiency in work and community living.

Vocational education has been a component of the special education program even before PL 94-142. But the new thrust is called "transition" and entails planning for the special education student's life beyond age 20.

Transition became a concern of parents of handicapped students as their children approached high school. Parents became increasingly concerned about what would happen to their children once they aged beyond public schooling. The advocates succeeded in obtaining federal legislation to test out the concept of having trained staff do "individualized transition plans." The University of Hawaii College of Education succeeded in obtaining a demonstration grant for transition planning and proceeded to test it in two districts. The concept was adopted in the Six-Year Special Education Plan. A curriculum to train staff was implemented at the College of Education.

The two districts which pilot tested the concept have designated some of their staff to be individualized transition plan coordinators. They have also used supplemental special education positions that the Legislature granted for the Accelerating Successful Performance in Regular Education program (ASPIRE). According to the developers of the original ASPIRE request, the positions were intended to assist special education students when they were in regular

education--i.e., when they were "mainstreamed"--hence the "in regular education" portion of the program title. In 1985, in response to a DOE request, the Legislature granted 21 temporary teacher and 21 temporary educational assistant positions for the ASPIRE program. The numbers have since doubled.

Most of the school personnel we interviewed understood the ASPIRE program to be for mainstreaming assistance. They confirmed that when special education students are in regular classes for at least part of the time, they often need more help than regular students. The ASPIRE staff, working with both the regular and special education teachers, ease the student's way in keeping up with his/her regular peers.

The schools we interviewed with ASPIRE positions universally approved and appreciated the positions. One high school juggled its special education regular and ASPIRE positions in such a way as to enable all the special education teachers to provide mainstreaming assistance in the regular classrooms. But two districts have decided that the ASPIRE positions shall be used for individualized transition plan purposes. The schools in one were not given the option to choose; the schools in the other have a little more flexibility.

The state office has not yet developed position descriptions for individualized transition plan coordinators. It is not clear what these people are supposed to do. Yet DOE has requested 30 new transition coordinator positions and called it a workload increase. The school staffs we interviewed already appeared to be carrying out many of the functions that individualized transition plan coordinators might do. These include assisting students in applying for jobs, referring them to post-high school agencies, etc. Most importantly, it is not clear what the relationship between the individualized *transition* plan and the individualized *education* plan would be. The individualized education plan should be done in the context of what is ultimately planned for that student but this was not clearly understood.

The relationship of the individualized transition planning and existing vocational education is also unclear. DOE currently has several vocational programs in place for special education.

The Occupational Skills Program is one part of the regular vocational education program. It consists of six to eight week modules of hands-on instruction, usually by practitioners, and taught either at occupational skills centers or at the schools. The district occupational skills coordinators try to find jobs in the community for the occupational skills students, either while they are still in school or after high school.

The Department of Human Services Special Education-Vocational Rehabilitation program consists of counseling, job coaching, and job finding. Job coaching involves having program staff

accompany students on the jobs, teaching them in small steps, being available for assistance--in short, relieving the private employer of any additional work involved in hiring the handicapped. Students are paid nominal amounts.

Work Hawaii is a federally funded program available in some districts which includes job coaching and assistance in obtaining jobs. Students are also paid.

In our discussions with the districts and schools, it appears that one of the major problems with vocational programs is not at the school level--it is in having suitable community placements for students, either while they are still in school or after they graduate. In some communities, job opportunities are generally limited. In other labor-short areas, such as in Lahaina, the handicapped reportedly have few problems. If the opportunities are a function of the community environment, it is not clear what the individualized transition plan coordinator could do that existing staff have not already done. Some schools expressed a preference for additional *teaching* staff, or at least the flexibility to use their staff according to how they saw their needs.

Another problem with the current vocational program concerns the liability of private employers who accept student trainees. It is not clear how they are protected by the State. We were informed that since volunteers are insured by the State, the students who "work" at these sites are working for "volunteers." Some occupational skills instructors have gone so far as to turn back their pay (which is reportedly nominal anyway) rather than have to buy more expensive liability insurance.

The schools report that their vocational programs are also being affected by the diploma/ certificate decision for special education students. Special education students may receive either a diploma or a certificate. The diploma indicates that the graduate has both completed the course requirements and has passed the Hawaii State Test of Essential Competencies. The certificate, limited to special education students, only indicates that the student has completed the program designed for the student.

The schools report that parents much prefer the diploma route for their youngsters even though some school personnel believe the certificate is the more realistic route. This means that the student must take the required academic courses, leaving little time for vocational courses. They must also pass the Hawaii State Test of Essential Competencies. Schools report that special education students are having difficulty passing the Hawaii State Test of Essential Competencies because of the higher reading level now required. Many are switching to the certificate route in their senior year. However, by that time they may not have had the opportunity to take full advantage of the vocational program either.

The vocational education program for special education requires a broader approach than simply adding individualized transition plan positions. There are a number of areas of concern, and solving these would make vocational education a much more viable alternative for handicapped students. The state, district, and school levels need to know about, and coordinate the resolution of the common problems.

We urge DOE to reexamine the vocational education options in special education. There appears to be a need to define what kinds of outcomes it seeks for this population and the best ways to get to those outcomes.

Recommendations

1. *We recommend that the Department of Education:*

- *Examine its operations to reach agreement on the basic issue of what is special education;*
- *Take steps to identify all the costs of the special education program and routinely report these costs to the Legislature, including the funds expended by other state agencies;*
- *Identify per pupil expenditures for special education;*
- *Examine rationale for and impact of new staffing ratios in special education;*
- *Reexamine the vocational education and transition coordinator programs and proposals in terms of school by school needs and circumstances;*
- *Clarify special education summer school; and*
- *Review and resolve the issue of the liability risk of vocational instructors.*

2. *We recommend that the Department of Education take the lead in examining the services provided by all agencies to handicapped students, review their agreements and operations, updating either or both if necessary, to cover any gaps in services.*

3. *We recommend the Legislature place a cap on the number of temporary positions that the DOE is allowed to create.*

NOTES

Chapter 2

1. William E. Davis, *Resource Guide to Special Education: Terms, Laws, Assessment Procedures, Organizations*, 2nd ed., Boston, Allyn and Bacon, 1986, p. 281.

2. Hawaii, Department of Health, *School Health Services Branch Annual Report 1986-1987*, Honolulu, p. 9.

3. Memorandum from Chief, School Health Services Branch, to Office of the Legislative Auditor, September 27, 1988, re: School Health Services Branch statistics.

4. *Ibid.*

5. Internal communication from vocational rehabilitation administrator re: SE-VR Work-Study Program Annual Report for 1987-1988, Department of Human Services, August 1, 1988.

Chapter 3

1. Alan Slobojan, "Descriptive Cost Analysis of Special Education," *Journal of Education Finance*, Vol. 13, No. 1, Summer 1987, p. 100.

2. Judith D. Singer and John A. Butler, "The Education for All Handicapped Children Act: Schools as Agents of Social Reform," *Harvard Educational Review*, Vol. 57, No. 2, May 1987, p. 128 and p. 147.

3. James E. Ysseldyke, "Classification of Handicapped Students," *Handbook of Special Education: Research and Practice*, Vol. 1, ed. by Margaret C. Wang, Maynard C. Reynolds and Herbert J. Walberg, Oxford, Pergamon Press, p. 253.

4. *Ibid.*, p. 267.

5. Singer and Butler, p. 131.

6. Alan Gartner and Dorothy Kerzner Lipsky, "Beyond Special Education: Toward a Quality System for All Students," *Harvard Educational Review*, Vol. 57, No. 4, November 1987, p. 373.

7. Hawaii, Department of Education, *Implementation Procedures for the Allocation of State-Funded Special Education Instructional Positions*, Honolulu, February 1988, p. 4.

8. "Operating Budget Instructions for Fiscal Biennium 1989-91," memorandum from Charles T. Toguchi, Superintendent, to Assistant and District Superintendents and Superintendent's Office Branch Directors, January 19, 1988.

RESPONSES OF THE AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

Preliminary copies of this report were transmitted to the Department of Education (DOE), the Department of Accounting and General Services (DAGS), the Department of Health, and the Department of Human Services for their review and comments. Copies of the transmittal letters to DOE and DAGS are included as Attachments 1 and 2 of this appendix. The responses from DOE and DAGS are included as Attachments 3 and 4, respectively. The Department of Health and the Department of Human Services declined to respond.

Response of the Department of Education

The Department of Education has submitted a response which is comprised of a letter from the Superintendent of Education with Appendices A through F. Because of the length of the appendices and attachments, we have reproduced in this report the Superintendent's letter and only Appendix A (without its attachments). The rest of DOE's response is available for inspection in the Office of the Legislative Auditor. The supporting information from DOE consists of the following:

- Appendix A, Attachment 1: Special Analytic Study, EDN 107 Exceptional Children Section (Preschool Handicap), August 28, 1978;
- Appendix A, Attachment 2: Letter to Dr. Margaret Donovan from Annette Y. W. Chock, Deputy Attorney General, re: *DOE v. Tara H., Civil No. 86-1161,* August 8, 1988;
- Appendix B: 34cfr300.14, Special Education (described by Superintendent's letter as "a computer search of the definition of special education");
- Appendix C: State of Hawaii, Department of Education, *Initiative: Staffing Goals for State-Funded Special Education Instructional Positions*, January 1988;
- Appendix D: Memo to Mr. Charles T. Toguchi, Superintendent, from Herman M. Aizawa, Assistant Superintendent, Office of Instructional Services, re: Summer School Programs for Regular and Special Education Students, November 21, 1988; letter to The Honorable Charles T. Toguchi from Warren Price, III, Attorney General, re: Serving Handicapped Students in Summer School, July 26, 1988; memo to District Superintendents, from Charles T. Toguchi, Superintendent, re: Regular and Special Education Summer School Programs, January 17, 1989;

- Appendix E: Memo to Dr. Donnis H. Thompson, Superintendent, from Charleen M. Aina, Deputy Attorney General, re: Student Accident Insurance--Occupational Training and Related Services, June 3, 1982;
- Appendix F: (unnumbered) A Bill For An Act Relating to Exceptional Children (described in the Superintendent's letter as "draft bill which will permit the State of Hawaii as co-employer to assume the liability for workers compensation coverage").

The Department of Education disagrees with some of the findings and recommendations and confirms other points we have made in this budget review and analysis. The department's response generally reflects a state-level perspective. On the other hand, we have reported on perceptions of the program in the districts and the schools which we believe the department should consider and address. These perceptions include some confusion over the basic issue of what is special education as the definitions are applied in evaluation and in designing teaching strategies.

The DOE disagrees with several points which concern the costs of special education and reporting on those costs. But it also agrees that it should take the lead in examining the services provided by all agencies to handicapped students. The point that we have stressed throughout the report is that DOE's focus should be not only on the program but also on its costs.

Response of Department of Accounting and General Services

The Department of Accounting and General Services comments on the issue of on-campus transportation of special education students. DAGS maintains that it provides home-to-school-to home and school-to-school transportation according to rules, regulations, and agreements with DOE. If some determination is made that on-campus transportation should also be provided by DAGS, the Comptroller states that rules, regulations, and statutes must be amended accordingly. However, DAGS does not specify the changes that it believes would be required. In our review, our observation was that in this multiagency program, the agencies involved tend to take a hands-off position until a problem becomes severe. We believe that neither DAGS' response nor DOE's sufficiently acknowledges the need to resolve the problem of on-campus transportation. If resolution requires changes in statutes, the matter should be brought to legislative attention.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813

January 9, 1989

COPY

Mr. Charles T. Toguchi
Superintendent of Education
Department of Education
Liliuokalani Building
1390 Miller Street
Honolulu, HI 96813

Dear Mr. Toguchi:

Enclosed are three copies, numbered 4 to 6, of the preliminary report on the **Budget Review and Analysis of the Special Education Program**. If you intend to comment on our recommendations, we ask that you indicate by telephone by January 11, 1989, your intention to do so. If you decide to submit a response, please submit that response by January 19, 1989. We will append the response to the report submitted to the Legislature.

The Governor and the presiding officers of the two houses of the Legislature have also been provided copies of this preliminary report. Copies have also been transmitted to Dr. John Lewin, Director of Health; Mrs. Winona Rubin, Director of Human Services; and Mr. Russel Nagata, Comptroller.

Since the report is not in final form and changes may be made, access to this report should be restricted to those individuals whom you might wish to call upon to assist you in reviewing the report. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the continuing assistance and cooperation extended to us by the staff of the Department of Education.

Sincerely,

Newton Sue
Acting Legislative Auditor

Enclosures

ATTACHMENT 2

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813

COPY

January 9, 1989

Mr. Russel Nagata, Comptroller
Department of Accounting and
General Services
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Nagata:

Enclosed is copy number 10 of the preliminary report on the **Budget Review and Analysis of the Special Education Program**. We call your attention to those portions which discuss the school transportation program of your department. If you intend to comment on our recommendations, we ask that you indicate by telephone by January 11, 1989, your intentions to do so. If you decide to submit a response, please submit that response by January 18, 1989. We will append the response to the report submitted to the Legislature.

The Governor and the presiding officers of the two houses of the Legislature have also been provided copies of this preliminary report.

Since the report is not in final form and changes may be made, access to this report should be restricted to those individuals whom you might wish to call upon to assist you in reviewing the report. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the continuing assistance and cooperation extended to us by the staff of the Department Accounting and General Services.

Sincerely,

Newton Sue
Acting Legislative Auditor

Enclosure

JOHN WAIHEE
GOVERNOR

ATTACHMENT 3

CHARLES T. TOGUC
SUPERINTENDEN

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P. O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

RECEIVED
JAN 20 11 13 AM '89
STATE OF HAWAII

January 20, 1989

MEMO TO: Mr. Newton Sue, Acting Auditor

F R O M: Charles T. Toguchi, Superintendent
Department of Education

Charles T. Toguchi

SUBJECT: RESPONSE TO BUDGET REVIEW AND ANALYSIS OF THE SPECIAL EDUCATION PROGRAM BY LEGISLATIVE AUDITOR

The Department of Education has reviewed the report by the legislative auditor. The report is comprehensive and has brought together data from state, district and school level sources. The legislative auditor is commended for doing an admirable review of a very complex subject. The Departmental response to the audit is in two parts:

PART ONE

Part one of the response clarifies certain points of information which were inaccurate in Chapters Two and Three. These clarifications are presented in Appendix A.

PART TWO

Part two of the response focuses on the specific recommendations made by the auditor at the end of Chapter Three and is considered sequentially as presented in the legislative auditor's report.

1. We recommend that the Department of Education:

- Examine its Operation to Reach Agreement on the Basic Issue of What is Special Education.

  Special Education is defined in Public Law 94-142, 300.14 and in Chapter 36 to mean specially designed instruction, at no cost to parents, to meet the unique needs of a handicapped child. The term includes physical education and vocational education. The term also includes speech therapy when the speech impairment is the primary handicapping condition.

A computer search of the definition of special education shows that most states like Hawaii have adopted or adapted the federal definition of special education (Attachment B).

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

Textbooks in the area of special education indicates that special education is conceptualized as a system to serve exceptional children. A typical definition of exceptional children offered by Kirk (1972) is:

"An exceptional child is a child who deviates from the average or normal child (1) in mental characteristics, (2) in sensory abilities, (3) in neuromuscular characteristics, (4) in social or emotional behavior, (5) in communication abilities or (6) in multiple handicaps to such an extent that he requires a modification of school practices or special education services in order to develop his maximum capacity."

Hawaii provides services to children who meet the eligibility criteria established by the state in seventeen areas of exceptionality all of these areas and eligibility criterias are found in the Programs Standards and Guidelines for Special Education and Special Services (1977). Given that all of these materials were provided to the auditor, the Department is unclear about what is the real meaning of the recommendation.

Further the Programs Standards and Guidelines for Special Education and Special Services are currently being revised and updated to reflect the trend toward more noncategorical services. In the process of this revision the scope of special education services is being very carefully reviewed.

- Take Steps to Identify All the Costs of the Special Education Programs and Routinely Report These Costs to the Legislature, Including the Funds Expended by Other State Agencies.

Department of Education currently maintains financial information regarding expenditures incurred by Department of Education (DOE) for handicapped students, Department of Health (DOH), Department of Human Services (DHS), and Department of Accounting and General Services (DAGS) also incur expenditures for different types of services to handicapped children. Should DOE take the lead in compiling expenditures for government services other than education? We think not. Each agency should report its own expenditures. Financial reports for all government services to different target groups or populations should rest with some central agency such as DAGS or Budget & Finance (B&F). If this type of information is considered critical for high level decision-making by the governor or the legislature, then DAGS, the agency that keeps the accounting records for the entire state, should be asked to code such expenditures so that the required reports can be made available to whoever is interested. But a line agency such as DOE should not be charged with keeping expenditure data for another line agency. DOE is the only agency responsible for special education services. It should and does keep expenditure records on such services. The health department is responsible for health services, DAGS for transportation services, and DHS for vocational rehab services.

If each agency is asked to keep accounting records and prepare financial reports about expenditures of other agencies, there will be tremendous

duplications and added work for everyone. This is not an efficient way to operate. Either by state constitution or state law, DOE does not have financial or management responsibility for health services, vocational rehab services, and other noneducational services aimed at handicapped children. It should therefore neither control nor be responsible for the financial accounting of such expenditures.

- Identify Per Pupil Expenditure for Special Education.

The Department of Education does utilize a procedure for identifying per pupil expenditures for special education.

- Examine Rationale for Impact of New Staffing Ratios in Special Education.

The rationale for the new staffing ratios in special education is presented in the January, 1988 document entitled Initiative: Staffing Goals for State-Funded Special Education Instructional Positions. In this special analytic study, the problem and the proposed solution (revised staffing ratios) are delineated at length (See Appendix C).

In addition there is a comprehensive multi-year evaluation of the special education program planned. This evaluation will use both formulative and summative data and will be conducted by an external evaluator. It will begin in 1989 and is projected for completion in 1992. The initial planning of the evaluation was begun in early 1988 with the Evaluation Section of the Department of Education.

- Reexamine the Vocational Education and Transition Coordinator Programs and Proposals in Terms of School by School Needs and Circumstances.

The Department of Education is reexamining the vocational education and transition coordinator programs and proposals. One of the activities in this reexamination process is the completion of draft guidelines on transition planning by the end of February 1989. The design of the document incorporates school by school needs through coordination with each district.

This document is being developed to assist school and district personnel in assuming leadership in effective transition planning for high school students with handicaps. It will provide a basic understanding of the process, present information that will facilitate planning for individual students, and describe some of the mechanics of arranging post-school services. The sections will focus of the need for transition planning, the transition process, and the implementation activities necessary over the next several years to actualize the systematic transition process.

- Clarify Special Education Summer School

It is true that the department started out with most of its special education students not having summer school written in their IEPs and with

parents having to pay for summer school. However, a class action suit filed on August 12, 1980 in U.S. District Court for the District of Hawaii challenged the department's policy of excluding summer school programs and services from the handicapped student's IEP. This action was certified on October 2, 1980 and consisted of:

> All Hawaii school children who have been identified as in need of special education and whose unique needs require or may require special education services for more than the regular nine month school year. (Lee v. Clark, Civil No. 80-0418, U.S. District Court, District of Hawaii)

The department was found to be in contempt when it tried to implement the order and the second court order, Lee v. Thompson, Civil No. 80-0418, U.S. District Court, District of Hawaii, dated April 30, 1982 was issued which stated:

> First, the guidelines set a time limit on the summer education of handicapped children that applies to all who require summer school, regardless of whether the unique needs of a particular child require more or less than that predetermined limit. This is not consistent with the court's order.

Due to the difficulty in implementing the standard imposed upon the department, students in FSC were granted summer school at no cost to parents. Special education programs that run "virtually the entire summer" have remained constant over the years.

The department has reviewed the summer school policies for the handicapped and will be following current procedures stated in the Summer School Program: Guidelines and Procedures. The department must provide similar or equivalent access to summer school to other handicapped students who do not meet the Summer School Standard as the department is currently providing summer school to nonhandicapped students. (Section 504 of the Rehabilitation Act of 1973 states, "No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity . . .")

The department will be providing inservice training to all special education teachers to apply the Summer School Standard imposed by Lee v. Thompson. This will not be a "more stringent criteria," but perhaps a more, consistent application of the criteria (Summer School Standard).

A sub-committee of the Task Force on Special Education Summer School met on October 5, 1988 to develop plans for inservice training on the implementation of the Summer School Standard during the 1988-89 school year. The first phase of the inservice training activities involved planning of inservice activities for district and school level personnel.

District Designated Trainers (DDT) were identified by each district to be trained by the sub-committee members. DDTs have had three inservice training sessions on the Summer School Standard and are currently in the final phase of their preparation to conduct Summer School Standard inservice training in their respective districts. March 1989 is the targeted period for the provision of this training.

It is anticipated that the new summer school procedures will be in line with a) P.L. 94-142, b) Section 504 of the Rehabilitation Act of 1973, c) Section 301-21 of the Hawaii Revised Statutes, d) Lee v. Clark, Civil No. 80-0418, U.S. District Court, District of Hawaii, e) Lee v. Thompson, Civil No. 80-0418, U.S. District Court, District of Hawaii, and f) Chapter 36, Title 8, Administrative Rules, "Provision of a Free Appropriate Public Education for Exceptional Children Who Are Handicapped" so that litigation against the department can be prevented.

Issues relating to the provision of special education summer school for the handicapped have been addressed by a task force since February 26, 1988. The greatest concern of the task force was the implications of legal mandates, both at the state and federal levels. New summer school procedures will be implemented for handicapped students for Summer, 1989 (See Appendix D).

- Review and Resolve the Issue of the Liability Risk of Vocational Instructors

The Department of Education is working closely with the Attorney General's Office and Legislature to resolve the issue of liability of private employers who accept student trainees. Efforts are being made to remove the liability for these students from private employers (See Appendix E, Attorney General's Opinion of 1982).

With the assistance of one of the legislators, considerable time and effort have been spent in researching various ways to remove liability for student trainees from employers. Other representatives involved in the meetings included those from the Departments of Accounting and General Services, Personnel Services, Attorney General, and Human Services. The result is the attached draft bill which will permit the State of Hawaii as co-employer to assume the liability for workers compensation coverage (See Appendix F).

This is a difficult problem which requires the cooperation, support and assistance of many departments and the legislature to provide an adequate solution. The continued support of the Attorney General's Office and the legislature in the resolution of this issue is appreciated.

2. We recommend that the Department of Education take the lead in examining the services provided by all agencies to handicapped students, review their agreements and operations, updating either or both if necessary, to cover any gaps in services.

The Department of Education will take the lead in examining the services provided by all agencies to handicapped students. The Department of Education is mandated by law to provide a free appropriate public education to all handicapped children ages three to twenty (3-20). The related services, required by handicapped students so that they can benefit from special education, are also mandated by federal and state law even though these services may be delivered by another agency such as the DOH, DAGS, or DHS.

In the planned comprehensive evaluation for special education, the first phase will examine perceptions of special education of students, parents, teachers, administrators, and related service providers. The evaluation will also examine all current interagency agreements for providing services to the handicapped. These data will provide a base for restructuring the delivery of special education services as appropriate.

3. The Legislature place a cap on the number of temporary positions that the DOE is allowed to create.

The reason why the budget had to be exceeded each year was because the approved budget was understated. The needs of the program exceeded the resources available. Placing a limit on the budget may not solve the problem. The best solution is to provide sufficient funds so the IEP requirements can be met. But even with the most sophisticated projection models, it is difficult to predict with precision the exact number and kind of handicapped population the schools will have to serve in future years. So flexibility is still needed to make sure the schools have sufficient resources to provide the services needed to comply with the law. This flexibility can be either an open-ended budget, a contingency reserve of positions and funds, or authorization for DOE to hire additional positions beyond the appropriation act. If such a cap is preferred, DOE suggests the cap be no less than fifty (50) temporary positions. This means that if the program is adequately funded, and if there are no unforeseen increases in enrollment, fifty (50) positions should be sufficient to accommodate normal contingencies.

CTT:MAD:dk

Attachments

cc: Office of Instructional Services

There are certain points in Chapter II and III which need further clarification. Each of these points will be treated separately with reference to the specific page in the audit report.

Handicapped students serviced in Hawaii age Three to Twenty (3-20)

Page 3

The Silva consent agreement established the lower limit of age three for special education services in Hawaii. P.L. 94-142 defers to previous state agreements on this point. This point is not made clear in the information provided on pages three to five (3-5) of the auditor's report (Back-up Data Special Analytic Study August 28, 1978, Attachment 1).

Comparison of Federal and State Standard of Service

Page 5

In October 6, 1987, there was an order concerning applicable legal standards filed in federal court in the Tara H. case. The judge found that the Hawaii standard and the federal standard were equivalent. The auditor's report indicates at the bottom of page five (5) that Hawaii has a broader standard. The court found that the federal standard and the Hawaii standard were equivalent. (Attachment 2)

Additional legislative and judicial requirements.

Page 6

On page six (6) the auditor's report finds that the final major piece of legislature was P.L. 98-199. In 1986, P.L. 99-457 was passed. This is a major piece of legislature which provides comprehensive services for children ages zero to five (0-5).

In Hawaii the Department of Health is the lead agency for zero to three (0-3) and the Department of Education is the lead agency for three to five (3-5). The focus of P.L. 99-457 is to provide comprehensive services to families of infants and toddlers who have special needs. Each state has the right and obligation to determine the population that will be serviced under P.L. 99-457. In this legislative session there will be bills introduced relative to P.L. 99-457 and Hawaii's implementation plan.

State Staff

Page 9

The state does not have contracted personnel working on laptop computers. However there is a state resource teacher for special education technology funded by P.L. 94-142 funds. Marcia Jenkins the teacher who holds this position is carrying out extensive inservices with teachers, and administrators on computer applications as they relate to the handicapped.

There is a state project for inservices in special education funded by Part D of P.L. 94-142 entitled Project Ho'okoho. Spencer Adams is the resource teacher in this position.

Project Ho'okoho provides inservice sessions across the state. There are more than eighty-four modules that teachers can select as well as statewide initiatives that are made available to teachers, educational assistants, related service providers, administrators and parents.

District Personnel

Page 9

The 327 district personnel reflect positions in special services and special education. Approximately three-fourths of these positions are special services personnel who provide the comprehensive psychoeducational evaluations.

Services to handicapped students.

Page 14-15

In the summary of services to handicapped students provided by the Department of Health on page fifteen (15), there is no mention of mental health services. This is an important service and the need for mental health services far exceeds the services that are available for both handicapped and nonhandicapped students.

Substantial Costs of the Special Education Program

Page 17

It is true that special education is more expensive than regular education. But this is perfectly understandable. These handicapped children require more personal attention that normal children. Handicapped children also require therapy services, periodic evaluations, and mainstreaming help. Although the costs of such services appear to be high, the costs of neglect is astronomical: possible incarceration in a state institution, a lifetime of dependency on the state and others, economic unproductivity, misery and frustration, and unrealized human potential. This is why it is crucial that the state do its best to help all handicapped persons when they are young and growing. The costs of remediation grows in direct proportion to the period of neglect. When viewed in this light, special education services is not only a must, it is a true bargain.

Lack of analysis of special education costs.

Page 19

We beg to differ. We do analyze the costs of special education. Maybe we do not do enough of this. But it is not from lack of effort. The special education plan took three years to develop. The development of this plan involved a detailed analysis of the entire special education program including the different types of instructional strategies for each type and severity of handicapping conditions, problems of geographical isolation, age range of classes, teacher turnover problems, use of educational assistants, transition and mainstreaming

requirements, staffing patterns, enrollment projections, the short and long range costs, exceptions to the staffing standards, and other facets of the program. Such factors were examined and discussed in great detail by a large committee, by the staff of the Office of Instructional Services, by school personnel, and later by other offices and decision-makers. When the budget for special education is prepared annually, it is subjected to as much analysis as any other ongoing program, maybe more. It officially adopted by the Board of Education, the level of services for the various handicapping conditions must be provided equitably to all students across the state. The auditor's report further suggests that it might be desirable to look at the expenditures of special education services by other states and school districts. But there are many variables that must be taken into consideration when making such comparisons including differences in cost of living, differences in the salaries of teachers and aides, severity of handicapping condition, size of the school district, level of adequacy of services, geographic isolation, etc. Unless all necessary data are compiled and analyzed, fair comparisons are made, it is not as useful as an analysis of Hawaii's own program. For example, it is known that Alaska spends almost two times per pupil for education as Hawaii. Hawaii would have to spend about $500 million per year for elementary and secondary education to be comparable with Alaska's per pupil expenditure. But this bit of information has little significance unless one understood the full situation of the special education program in Alaska.

Special education program operated with open-ended funding.

Page 20

The provision of free, appropriate education in the least restrictive enviroment for all handicapped students is law. There are strict rules guiding referrals, evaluations, parental consent, development of individualized education plans, and placement into appropriate programs for each handicapped student. The main reason why previous superintendents felt compelled to exceed the budget each year is because they believed DOE should obey the laws guiding special education services to handicapped students. It was the professional judgement of DOE that the additional teacher positions were needed to comply with the IEP requirements. The problem is not that the budget was exceeded. The problem is that the budget was understated each year. If the program was adequately budgeted and funded, there would be no need to exceed the appropriation. The solution to the problem is not to put a cap on the program, but to fund the program at the level deemed adequate by those who are charged with its implementation.

Funding for administrative support

Page 22

This report contains numerous recommendations which suggest that there is a need for greater administrative control of the special education program and budget. However, there is no support for an action which would provide the stability or security of many of the personnel who are charged with this assignment. Temporary positions have existed in the OIS, Special Education Section for over thirteen years, having been vacated by numerous, qualified personnel in order to secure positions with permanent status. Since DOE policy does not permit federally-funded employees to secure tenure, it is likely that frequent attrition will continue. Temporary, federally-funded clerical positions are typically

vacant about one-third of the time, with vacancies existing for as long as eight months at a time.

Despite the federal regulation which disallows federal funds to be used to "supplant" services required by the state, these temporary personnel have clearly been providing services for over a dozen years which are not "supplemental" in nature. It would be naive to expect that the federal government will allow such a practice to continue indefinitely. The administration of special education at the state level functions largely in a "crisis" orientation due to attrition and loss of institutional memory. Until seasoned special educators and clerical personnel in federally-funded temporary positions are funded according to the types and levels of responsibility with which they are charged, it is likely that efficiency in the administration of special education programs will continue to be compromised.

The practice of establishing temporary positions has been DOE's attempt to adjust to the inadequate appropriations allocated to them for teachers positions to meet the educational needs of the handicapped child required by P.L. 94-142.

Temporary positions are established as an interim measure to provide services to the handicapped child. If the need for services continues, then appropriate funds have been requested to establish these positions as permanent positions. When funds have not been appropriated for permanent positions, then these positions continue to remain temporary as a means to provide appropriate services as required by law.

This has had a detrimental effect on the teaching staff retained in these positions.

1) Even though temporary employees earn the same fringe benefits as permanent employees, non-tenured teachers in these positions are unable to earn tenure.

2) Non-tenured teachers can be bumped (displaced) by a tenure teacher seeking the position.

3) Non-tenured teachers have to be hired on a year to year basis until they can enter a tenured line.

4) Qualified teachers may move else where, or go into other fields because they have been displaced or they are unable to gain tenure in the temporary position they occupy.

The creation of temporary positions was only meant to be a short-term answer to inadequate funding problems and the perpetuation of temporary positions has added to the continued staffing problems of finding qualified and certified special education teachers.

If funding was truly adequate, we would not have to contend with temporary teaching positions.

The DOE's questionable budgetary problems.

Page 23

The auditor's report argues that the request for new positions for the 1989-91 biennium should have been classified as program adjustment rather than workload increase. This distinction is important only to the budget technicians, not to the schools or students. On this matter, there is room for argument both ways. DOE requested the funds as workload increase because it believed that once the old staffing standards were deemed inadequate and the new standards approved by the board, there was a mandate to implement the new standard. It must be remembered that special education is not a supplemental program. For handicapped students, it is their basic education program. Special education is to the handicapped child what regular education is to the normal child. If B&F felt the requests should be classified as program adjustments, they were free to reclassify the requests. As it turned out, B&F did just that. The entire special education request was not included in the governor's CORE budget, that is, the current services and workload increase budget that has been transmitted to the Legislature. Instead, the special education request is now being considered under program adjustment as part of the governor's initiatives for public education that will be presented to the Legislature on January 23, 1989.

DAGS Services

Page 28

A memo to clarify the implementation of Chapter 36, relating to transportation, was developed with DAGS knowledge and circulated to district superintendents and principals on April 16, 1986 by Superintendent Francis Hatanaka. The rule indicates that the related services of transportation, when specified in the individualized education program (IEP), shall be provided at no cost to parents in different situations.

1. To and from school, when the child is unable to utilize the regular mode of transportation due to handicapping condition.

2. Between the child's school and other sites, when services specified in the child's IEP are provided.

3. In and around the child's school and other sites, when services specified in the child's IEP are provided.

DAGS has agreed to the above guidelines and has made earnest effort to provide whatever is needed.

Prior to the closing of the school year, DOE submits its projected transportation needs to DAGS for the next school year. Although there has been isolated cases reported to DAGS, school officials and parents have been instructed to notify the bus company, whenever transportation was not needed.

It is also recognized that with liability risks to teachers, most of them have stopped transporting students to job sites. This has increased the referrals to DAGS.

More Occupational Skills Programs training stations have been established in community sites rather than depending on simulated instructions on school campuses. It has been demonstrated that most of our handicapped students have difficulties in transferring classroom learnings to live situations in the community.

ATTACHMENT 4

CS-89.150

JOHN WAIHEE
GOVERNOR

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P. O. BOX 119
HONOLULU, HAWAII 96810

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COMPTROLLER

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DEPUTY COMPTROLLER

DIVISIONS:
ACCOUNTING
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AUTOMOTIVE
CENTRAL SERVICES
PUBLIC WORKS
PURCHASING
SURVEY

January 19, 1989

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OF THE AUDITOR
STATE OF HAWAII

Mr. Newton Sue
Acting Legislative Auditor
The Office of the Auditor
485 S. King Street, Rm. 500
Honolulu, Hawaii 96813

Dear Mr. Sue:

We have reviewed the preliminary report on the Budget Review and Analysis of the Special Education Program and have the following comments regarding the on-campus transportation request by the DOE mentioned on page 28 of the report:

> Rules, regulations and agreements have been established for the transportation of school children. These rules, regulations and agreements are specific as to DAGS' responsibility regarding the transporting of students. DAGS' responsibility is to transport students from home-to-school, school-to-home, and school-to-school. If it is determined that on-campus transportation should also be provided by DAGS, the rules, regulations and enabling laws must be reviewed and amended to allow for this type of transportation.

Very truly yours,

RUSSEL S. NAGATA
State Comptroller